IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

WP(C).No. 14046 of 2006(V)

PETITIONERS:
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1. RANI SAMUEL, L.D.TYPIST,
GOVT. ENGINEERING COLLEGE, BARTON HILL,
THIRUVANANTHAPURAM.

2. REMA.L.S., L.D.TYPIST,
CONTROLLER OF TECHNICAL EXAMINATIONS,
KAIMANOM, THIRUVANANTHAPURAM.

BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SMT.C.V.RAJALAKSHMI
SRI.M.R.JAYAPRASAD

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
THE PRINCIPAL SECRETARY, HIGHER EDUCATION
DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR OF TECHNICAL EDUCATION,
THIRUVANANTHAPURAM.

3. HEMALATHA.S., U.D.TYPIST,
GOVT.ENGINEERING COLLEGE, BARTON HILL,
THIRUVANANTHAPURAM.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR --- R3
GOVERNMENT PLEADER SMT. M.R. SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 14046/2006 V

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE PROVISIONAL SENIORITY LIST OF TYPISTS NO. ED2/22682/2000 AS ON 31/10/2000 PUBLISHED BY R2 DT. 31/11/2000.

EXT.P2. COPY OF THE ORDER GO P NO. 36/91/P&ARD DT. 2/12/91.

EXT.P3. COPY OF THE ORDER GO P NO. 37/96/P&ARD DT. 7/11/96.

EXT.P4. COPY OF THE ORDER NO. ED 2/19311/2005 DT. 17/1/2006 BY R2.

EXT.P5. COPY OF THE REPRESENTATION FILED BY THE P1 BEFORE THE R2 DT. 1/2/2006.

EXT.P6. COPY OF THE REPRESENTATION FILED BY THE P1 BEFORE THE R1 DT. 28/2/2006.

RESPONDENT'S EXHIBITS:

EXT.R2A. COPY OF THE PROCEEDINGS NO. ED2/2082/00 DT. 22/1/2001.

EXT.R2B. COPY OF THE LR. NO. ED2/19311/05 DT. 5/6/06.

EXT.R3A. COPY OF THE APPLICATION SUBMITTED IN THE PROFORMS APPENDED TO THE GOVERNMENT ORDER FOR TRANSFER OF GOVERNMENT EMPLOYEES.

EXT.R3B. COPY OF THE ORDER NO. ED2/14744/2004 DT. 29/7/2004 TRANSFERRING AND POSTING THE R3 TO THIRUVANANTHAPURAM.

EXT.R3C. COPY OF THE LETTER NO. ED2/19311/2005 DT. 5/6/2006 OF THE R2.

EXT.R3D. COPY OF THE LETTER NO. INFORMATION/37790/06 DT. 15/12/2006.

[True Copy]

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K.M.JOSEPH, J.

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WP.(C) No.14046 OF 2006

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Dated this the 14th day of February, 2007

JUDGMENT

Case of the petitioners in brief is as follows:

First petitioner was appointed as LD Typist on 24.4.2002 and the second petitioner was appointed on 22.10.2003 in Thiruvananthapuram District. The third respondent was appointed as LD Typist on 17.7.1999 in Kasaragod District. She was transferred by Ext.R3(b) order dated 29.7.2004. Therefore relying on Exts.P2 and P3 petitioners contended that the third respondent cannot take seniority from the date of joining duty in Thiruvananthapuram, which is a district different from which she was originally appointed. But notwithstanding the same, the third respondent is promoted as UD Typist before the petitioners by Ext.P4. Ext.P4 is challenged and there is a direction sought to promote the petitioners.

2. Counter affidavit is filed by respondent No.3. It is the case of the third respondent that the third respondent was appointed against open vacancy and not in terms of Circular dated 17.4.1990, that she was not transferred in terms of the Circular and therefore she will not

lose the seniority and she has not given any undertaking that she will forfeit the seniority. Counsel also relies on Ext.R3(c), which is sent by the Director of Technical Education detailing the grievances arising out of allowing inter-district transfer and the problems that arise and therefore it is contended that apart from the third respondent there are so many other persons and therefore the third respondent may not be singled out. Learned counsel appearing on behalf of the third respondent would point out that petitioners have no locus standi. It is pointed out that there are so many other persons between the petitioners and the third respondent and therefore petitioners cannot be said to be aggrieved.

3. Learned Government Pleader would submit that the difficulties are as pointed out in Ext.R3(c) and the matter is pending consideration before the Government.

4. As far as the contention regarding regarding locus standi, I am not impressed by the argument. The reason is that even assuming that the petitioners may not get appointment to the vacancy and that the persons in between them have not approached this court , it cannot still

be treated as public interest litigation. It is not a case where the petitioners have no interest at all. Petitioners, in law, are entitled to be ranked in terms of Exts.P2 and P3 above the third respondent. If that is so, in giving promotion to the third respondent overlooking the seniority of the petitioners, there is a legal injury to the petitioners. That apart, if the promotion of the third respondent is set aside, there is a claim to be considered for being promoted after providing for the seniors of the petitioners. In that sense it cannot be said that there is no locus standi.

5. As far as the question regarding seniority is concerned, the matter is governed by orders passed by the Government, whereunder it is crystal clear that inter district transfer can be permitted only after five years and a request transfer will result in loss of seniority. This is the law as it stands. Ext.R2(b) may only result in reconsideration by the Government. As the law stands today, I am of the view that the petitioners are entitled to succeed. Regarding the contention that the third respondent has not given a declaration it cannot advance the case of the third respondent as she has been given an inter-district transfer

on request. The contention of the learned counsel for the third respondent that there is a practice and others are also involved cannot weigh with me. The fact that illegality is being perpetuated should not appeal to this court to throw out the legal claim of the petitioners. As soon as the matter is brought before this court I feel that it is the duty of this court to interfere in this matter.

Ext.P4 will stand quashed in so far as it relates to the promotion granted to the third respondent. I have not expressed any opinion on the right of the Government to take a decision on Ext.R3(c).

(K.M. JOSEPH, JUDGE)

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K.M.JOSEPH, JJ.

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W.A. No. OF

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JUDGMENT

Dated this the day of February, 2006.